93-542

Supreme Court, U.S.
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No. _____

IN THE

Supreme Court of the United States

October Term, 1993

In the Matter of
PARUL P.,
A Child Under Eighteen Years of Age Alleged to be
Abused by RASHMI, P.,

Petitioner,

-against-

COMMISSIONER OF SOCIAL SERVICES,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK SUPREME COURT, APPELLATE DIVISION, SECOND DEPARTMENT

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QUESTIONS PRESENTED

1. Where the judgment of the Family Court is recognized by the Appellate Courts of the State of New York as indeterminately prohibiting petitioner from living in the same household with the child could the Court make such a determination applying the civil preponderance burden rather then the higher burden of clear and convincing where the charges confronted by the petitioner were in substance felony and misdemenor charges of sexual abuse?

2. Could petitioner receive a fair trial where the Family Court denies petitioner a time frame as to when petitioner was alleged to have committed the complained of acts of sexual abuse, denied petitioner the tapes of sessions with the validator and the records of the validation containing exculpatory material so as to impair effective cross examination of the validator and in addition, denied an opportunity to present an effective defense when the court denied petitioner's application to take testimony by commission or deposition in India and in Pennsylvania and also ignored petitioner's request to arrange for a Gajarti interpreter?

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OPINIONS BELOW

The opinion of the New York State Supreme Court, Appellate Division, Second Department is officially reported as in the Matter of *Parul P, Rashmi P. v. Commissioner of Social Services*, 85 AD 2d 981 (2nd Dept. 1992) and appears in Appendix A hereto at 19-39.

The Family Court decision *of Kaufman, J not otherwise reported dated October 12, 1989* is reproduced in Appendix B at p.4a-16a and orders of disposition are reproduced as Appendix B1 at 17a-20a.

JURISDICTION

The final order of the Appellate Division affirming the Family Court order had been served by mail upon Petitioner with the notice of entry dated September 11, 1992 said order is reproduced as Appendix A at 1a to 3a. Thereafter petitioner sought leave to reargue and leave to go to the New York Court of Appeals which applications were denied by the Appellate Division Second Department by its order dated February 1, 1993 reproduced at Appendix C at 19a-20a. Thereafter petitioner filed a motion for leave to go to the New York Court of Appeals which was denied by the New York Court of Appeals by its order dated July 1, 1993 said order of denial is reproduced in Appendix D at 21a. In accordance with Rule 13.1 of this Court, this petition is filed within 90 days of the date of denial of discretionary review (leave to appeal). The jurisdiction of this Court is invoked under 28 U.S.C. *Sec 1257(a) (1988)* because the judgment of the Appellate Division sought to be reviewed draws into question the validity of section 1043(b)(1) of the New York Family Court Act on the grounds of its being repugnant to the Constitution of the United States. Petitioner further avers that the manner in which his trial was conducted violated the due process clause of the Fourteenth Amendment to the United States Constiutution which issue lies within this Court's jurisdiction to review.

As required by Rule 29.4(c) of this Court petitioner states that 28 U.S.C. 2403(b) (1988) may be applicable because this proceeding will seek *inter ailia* to question the constitutionality of a state statute and the constutional and statutory provisions involved.

A. Constitutional Provisions

The due process clause of the 14th Amendment to the United States Constitution.

The confrontation clause of the 5th Amendment to the United States Constitution:

> "...to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him"

The right to subpoena as set forth in the 6th Amendment to the United States Constitution:

> "...to have compulsory process of obtaining witnesses against him..."

B. Statutory Provisions

New York State Family Court Act section 1043(b)(1) which reads

> (b) In a fact-finding hearing (i) any determination that the child is an abused or neglected child must be based on a preponderance of the evidence; and

New York State Penal Law Sections which reads

> *§ 130.55 Sexual abuse in the third degree*

A person is guilty of sexual abuse in the third degree when he subjects another person to sexual contact without the latter's consent; except that in any prosecution under this section, it is an affirmative defense that (a) such other person's lack of consent was due solely to incapacity to consent by reason of being less than seventeen years old, and (b) such other person was more than fourteen years old, and (c) the defendant was less than five years older than such other person.

Sexual abuse in the third degree is a class B misdemeanor. (L.1965, c. 1030.)

§ 130.60 Sexual abuse in the second degree

A person is guilty of sexual abuse in the second degree when he subjects another person to sexual contact and when such other person is:

1. Incapable of consent by reason of some factor other than being less than seventeen years old; or

2. Less than fourteen years old.

Sexual abuse in the second degree is a class A misdemeanor. (L.1965, c. 1030.)

§ 130.65 Sexual abuse in the first degree

A person is guilty of sexual abuse in the first degree when he subjects another person to sexual contact:

1. By forcible compulsion; or

2. When the other person is incapable of consent by reason of being physically helpless; or

3. When the other person is less than eleven years old. Sexual abuse in the first degree is a class D felony. (L.1965, c. 1030.)

STATEMENT OF THE CASE

The important issue raised by this case is the manner in which the State of New York by the device of labeling the Family Court Proceeding Sex abuse trial as a civil proceeding convicts and metes out punishment which tears a family asunder for years, in a proceeding in which the petitioner father (Rashmi P) had to face trial in the following circumstances:

(a) The charging instrument the petition is devoid of any time frame except as of the date upon which the child is alleged to have complained to the authorities.(see Appendix G p. 31a to 38a)

(b) The fact that the Court would not aid defense counsel in enforcing process so that defense counsel was unable to utilize the validators records of recorded sessions with the infant on cross examination. (taped sessions)

(c) The fact that the State of New York allows the Family Court, sitting without jury, to apply the civil burden of preponderance rather than clear and convincing or beyond a reasonable doubt in trying the petitioner on a sex abuse charge which is in substance the identical charge that petitioner was confronted with in the New York State Supreme Court including a felony charge that were dismissed because in the circumstances of the due process available to petitioner as a defendant facing criminal charges petitioner could prove that he and his wife were in India at the time when the child here in the United States was to have been sexually abused by her father the petitioner herein.

(d) The denial to petitioner of fundamental devices needed to mount a defense such as an adequate bill of particulars, a commission to allow testimony by deposition of witnesses in India and Pennsylvania, and a *Gajarti* interperter.

Petitioner comes to this court to ask for a review of the treatment he has confronted under the judicial process of the State of New York wherein it is claimed the record of the Family Court proceedings clearly demonstrates the denial of fundamental rights to a fair trial.

A. STATEMENT OF FACTS

It is undisputed that Parul is sexually abused on or about April 5, 1988. It is further undisputed that on April 5, 1988 Parul suffered this sexual abuse in Rego Park Queens County and that from and including April 1, 1988 to April 3, 1988, Petitioner was able to demonstrate to the satisfaction of the Supreme Court Queens County that petitioner *was in India with his wife*. (See letter of Michael V. Ricci dated reproduced Appendix E at 22a to 27a).

Because of this, the Supreme Court Queens County dismissed the indictment for sexual abuse against petitioner. But when petitioner is brought to trial in the Family Court what is in substance the identical charges for which he was previously indicted in the Supreme Court, the Family Court sitting without a jury and applying the civil preponderence standard will adjudge that he committed the acts based upon the corroberative testimony of a validator even though that validator could only lawfully attest that the child was sexually abused and could not lawfully identify an abuser.

B. The Family Court's findings that petitioner was the abuser was made under the following circumstances

1) As aforestated there is a police report in the record showing that abuse takes place April 5, 1988 (reproduced as Appendix F at 28a to 30a)

2) The petition only states the date that Parul brings the matter to the attention of her teacher and states no time frame for the acts (reproduced at Appendix G) (petitioner is never afforded a time frame by the prosecutor). (Corporation Counsel)

3) The testimony of the validator indicating that he

had failed to elicit significant data from the child:

The court:...Dr. Lewittes what information about this matter are you aware of now that you weren't aware of when you formed your original validation opinion on this case.

The witness: Your Honor, there has been hours of testifying, in my opinion by counsel about a lot of data that I had no awareness of and by sitting here hearing all about other children, other defendants other cases, other validations, I would have to, you know state that there has been a lot of information that's come out that I never knew when I interviewed the girl. (Tr 93 June 4, 1990)

The Court: Now if some of this information is true that has been mentioned by the attorney would it be important for you to reevaluate your opinion in this case.

The Witness: Well, Your Honor given the way this case has gone the answer to your question is I think it would be best if somebody else was appointed to form a new opinion (Tr. 92 June 4, 1990)

4) The fact that the Court ignores its own impeachment of the Commissioner's lay witnesses Gelber and Hausen.

A. Gelber a Board of Education employee is put on the stand to show that petitioner admitted the alleged sexual acts. However, when interrogated by the Court the following was, elicited:

The Court: Ma'am did you tell the gentleman sitting here in Court, Mr. Patel the father of Parul did you tell him what his child told you.

The Witness: No, I did not (Tr 10 Oct. 13, 1989)

B. Hausen a Social Worker is also placed on the stand by the Commissioner to recite an admission and the court interrogates.

The Court: Yes do you have any way of identifying the person who told you he was the respondent on the telephone other than the fact that the person told you he was the respondent on the telephone.

The Witness: Well, when I came into court and when he was here the first time that's how I know it was Mr. Patel because I was here in court.

The Court: Let me ask you this, before the person called you on the telephone, had you met the respondent Patel.

The Witness: No

The Court: Now did you recognize the voice of the person who told you he was Mr. Patel on the telephone?

The Witness: Then or now?

The Court: Now

The Witness: Well we never had anymore conversations.

The Court: So the person who told you he was Mr. Patel on the phone, that's the only time that you had spoken to or heard the voice of that person.

The Witness: Correct

The Court: So the only way you know that this person is Mr. Patel is by the person telling you he was Mr. Patel is that correct

The Witness*: Correct (Tr. 70-71 Nov. 13, 1989)

5) The fact that the Court denied all applications to petitioner that were necessary if petitioner was to be afforded the opportunity to interpose a defense.

6) The fact that while the court is trying the case it is cajoling petitioners counsel to settle which causes animus between court and defense counsel.

Mr. Ricci...We had an approximately two hour conference from around 12 o'clock to a quarter to two in chambers, over my objection and off the record. I would like you to state on the record all the things you think are appropriate, that occurred and were said in chamber discussion.

The Court: Well, I don't remember everything that was and wasn't said I remember what I tried to do, Mr. Ricci was to ask the attorneys if there was some way that

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*Before the Appellate Division Second Department petitioner applied to bring before that court proof that the Hausen testimony had been fabricated. During her testimony she told the court that petitioner had told her *he had been released from jail over the weekend* she testified from her records that this call came to her on *Monday April 10, 1989.* The records petitioner sought to bring before the Appellate Court clearly indicate that petitioner was arrested *Sunday April 9, 1989* and is not arraigned till 4:00 P.M. on April 10, 1989. The Appellate Division denied the application.

all of the parties could come to a consent resolution of this case. A resolution of the case that would be in the interest of your client, in the interest of the child. (Tr. 117-118 June 4, 1990)

7) The child never testifies. The Commissioner attempts to put her on the stand with the following results:

The Court: I said in the robing room that when I started to question the child here in Court, sitting next to me, I noticed that she could only answer questions by nodding her head and she looked extremely frightened and began to cry...

I therefore suggest that the child be immediately referred for therapy and that there be some report after she has been in therapy as to whether or not it would be appropriate for the child to testify in open court and is the presence of respondent or to testify in amaera or soem other manner (Tr. 88 Nov. 13, 1989)

REASONS FOR GRANTING WRIT

1. This case involves the fundamental question as to whether petitioner Patel could be constitutionally tried applying the Civil burden of preponderence as to the Penal Law Act of Sexual abuse in the third degree pl 130.55; Sexual abuse in the Second degree (PL Sec. 130.60) and sexual abuse in the first degree (PL Sec 130.65) with the resultant disposition of banishment from his home and family for an indeterminate period of time which the Appellate Division Second Department characterized as:

> which prohibited him from living in the same household with the child unless

> prior application is made in Family Court (see Appendix A)

There is no question that the burden of proof applied by the Family Court was preponderance as contrasted to clear and convincing:

A. The Family Court Fact Finding Decision, needs:

> Although the Family Court Act refers to specific Penal Law sex offenses in defining the sexually abused child, abuse proceedings in Family Court are Civil not Criminal, in nature. Because the accused peneat is not subject to criminal sanctions in Famiy Court a finding of sexual abuse need only be based on a preponderence of the evidence (Fgm CT Act 1046...)

B. The Appellate Division Second Department reviewed the record below applying the Civil preponderance standard.

It is submitted by petitioner In light of the disposition that New York States use of the preponderance standard where the findings deal with substantive criminal changes which barred him from living with his family violates his rights to liberty and due process under the fourteenth amendment.

Petitioner believes that when this court examines the substantive impact upon him it will agree that the State of New York in its Courts has applied a constitutionally in firm burden and that this is a proper case for this court to review the conduct of the State of New York admeasured against the due process clause of the fourteenth amendment

see *Santosky v. Kramer* 455 U.S. 745 (1982), *Lehn v. Robertson* 463 U.S. 248 (1983).

It is submitted by Petitioner that the interests involved in the manner he was treated in the Family Court can well equate to interests that this Court has in the past found must be tried on a higher burden than mere preponderence such as Civil deposition proceedings as in *Woodby v. AS* 385 U.S. 276 (1986) and denationalization proceedings such as *Chaunt v. United State* 364 U.S. 350 (1960) or as in the welfare benefits case of *Mathews v. Eldrige* 424 U.S. 319 (1976) or the Civil commitment case of *Addington v. Texas* 441 U.S. 418 (1979)

Petitioner further asks that this Court view the consequence of deprivation of Family in the terms of the prohibition of cruel and unusual punishment which should not be allowed to be imposed on the civil preponderence standard. See *Trop v. Dalles* 356 U.S. 86 (1958)

2. Petitioner was deprived of fundamental due process procedures and devices which would have been necessary for an effctive defense and was even deprived of the effective process necessary for cross examination.

In upholding the Family Court's orders and findings the Appellate Division observed that Petitioner failed to testify or present evidence (see Appendix A)

In putting forth this observation the Court ignored and failed to address Rashmi P's position that:

> THE PROSECUTOR FAILED TO PROVIDE STATEMENTS OF THE INFANT PETITIONER AND FAILED TO PROVIDE EXCULPATORY INFORMATION

There is no question that the Commissioner and the Law Guardian knew that there existed materials in the

possesion of the validator of an exculpatory nature that should have been disclosed to the accused pursuant to *Brady v. Maryland* 373 U.S. 83 (1963) and that the absence of such disclosure severely impaired effective cross examination of the validator.

Clearly the Family Court was at all times aware from the testimony of the validator that there existed contemporaneous raw notes* and tape recordings of the two sessions of some two hours duration which the validator had conducted with Parul:

The Court: Dr. Lweiltes, let me ask you this, the entire interview you had with Parul on February 2nd and 9th.

The Witness: February 9th Your Honor

The Court: Were those two interviews all taped recorded from begining to end?

The Witness: 99.9 Yes Your Honor (Tr. 28 February 28, 1989)

Although trial counsel requests the Court's assistance in having the validator produce the tapes for the next session the court declines the application This denial in the circumstances should be viewed as an abuse of discretion see *Newman v. Silver* 553 Fed. Supp. 485 (S.D.N.Y. 1982) affirmed in part and modified in part 713F2d 14 (2nd Cir 1983).

---

* The contents of the raw notes of the validator were not provided to trial counsel until after the trial had been completed at which time trial counsel receives in the mail copies of the raw notes from a Supreme Court Justice. Before the Appellate Division Counsel attempted to bring the notes before the Court but the Court rejected the motion and refused to enlarge the record.

THE ACCUSED IS DENIED A TIME FRAME IN BOTH THE PETITION AND BILL OF PARTICULARS AND IS DENIED THE PROCEDURAL DEVICES THAT WOULD HAVE BEEN NECESSARY TO PRESENT AN EFFECTIVE DEFENSE

When Petitioner was indicted in the Supreme Court there was no difficulty for the District Attorney to elicit a time frame that the sexual abuse took place at the time when Parul is in New York and the accused father and wife are in India. The thereapist used by the District Attorney was able to pin point this because of Parul's birthday and the fact the acts took place within days after same.

But such particular time frame is not made available in the Family Court on the plea that the child is of tender years.

Furthermore, the Court elected to ignore all motions by the petitioner to the effect that the witnesses that petitioner would call as part of his defense resided in India and Pennsylvania and the Court repeatedly ignored all requests for commissions and depositions. The Court further ignored any request for a Gajarti interpreter which would have been necessary for petitioners witnesses.

In the brief filed before the Appellate Division counse for Rashmi P in a final footnote clearly set forth what occurred at trial as related to the intention of presenting a defense:

> "On February 23, 1990 at Tr 68 I have 15 to 20 witnesses
>
> On April 19, 1990 at Tr 9 Defense would call child

> On May 21, 1990 Tr 18 application for Gajarti interpretor which application was wholly ignored by court.
>
> On June 4, 1990 Tr 29 Application is made for Letters of Commission to take deposition on written questions in India and Pennsylvania - Again the request is ignored by the Court.

Petitioner requests that this Court understand that without the aforedescribed instruments of presentation including the lack of any time frame in the accusatory instrument and the subsequent bill of particulars it would have been a futile exercise to attempt to present a defense. Moreover, had petitioner under New York Law attempted to defend he may well have waived his rights to complain of the defects see *People v. Kalzen* 155 AD 2nd 882, 547 N.Y.S. 2d 716 (4th Dept. 1989)

CONCLUSION

The adjudication of guilt on the substantive criminal charges leading to the deprivation of family and the stigma attached thereto is a severe consequence that should be likened to a Criminal Conviction save for the prison cell. In these terms petitioner requests that this Court find sufficient grounds to review what he deems imperimissible treatment in terms of the protections found in the 14th amendment of the United States Constitution. For these reasons, a writ of certionari should be issued to review the opinion and orders of the Courts of the State of New York.

Respectfully submitted,

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APPENDIX A

SUPREME COURT OF THE STATE OF NEW YORK APPELLATE DIVISION: SECOND JUDICIAL DEPARTMENT

_____AD2d_____ Submitted June 23, 1992

GUY JAMES MANGANO, P.J.
ALBERT M. ROSENBLATT
DAVID S. RITTER
JOHN COPERTINO, JJ.

91-01602
91-00484

In the Matter of Parul P. (Anonymous). Rashmi P. (Anonymous), appellant; Commissioner of Social Services, respondent.

DECISION & ORDER

Katz and Ricci, Rego Park, N.Y. (Robert A. Katz of counsel), for appellant.

O. Peter Sherwood, Corporation Counsel, New York, N.Y. (Pamela Seider Dolgow and Patrick L. Taylor of counsel), for respondent.

In a child protective proceeding pursuant to Family Court Act article 10, the father appeals from (1) a fact-finding order of the Family Court, Queens County (Kaufmann, J.), dated October 12, 1990, which, after a hearing, found that he had sexually abused his daughter, and (2) an order of disposition of the same court, dated January 17, 1991, which, *inter alia*, prohibited him from

living in the same household with the child "unless prior application to do so is made in the Family Court", and directed that his visitation with the child be supervised by the mother.

ORDERED that the appeal from the order dated October 12, 1990, is dismissed, without costs or disbursements, as that order was superseded by the order of disposition dated January 17, 1991; and it is further,

ORDERED that the order of disposition dated January 17, 1991, is affirmed, without costs or disbursements.

Following a fact-finding hearing, the Family Court determined that the appellant had sexually abused his daughter Parul. The appellant now contends that the court's finding of abuse was against the weight of the evidence presented at the hearing. We disagree.

At the fact-finding hearing a social worker from the child's school and a caseworker assigned to investigate the allegations of abuse each testified to out-of-court statements made by the child detailing the sexual abuse by her father. Each of the child's accounts of the abuse were consistent with one another. Further, a psychologist qualified as an expert in clinical psychology, therapy, and child sexual abuse testified that the child repeated these allegations to him and that her statements, and behavior, were consistent with the five stages of the inter-familial, child sex-abuse syndrome. The validating evidence of the psychlogist constituted sufficient corroboration of the child's statement to support the court's finding (*see Matter of Latisha V.*, 175 AD2d 839; *Matter of Linda K.*, 132 AD2d 149). The appellant did not testify in his own behalf and did not present any evidence. On this record, we find that that the

court's finding of abuse by the father was supported by a perponderance of the evidence (*see* Family Ct Act § 1046[b][i]).

We have considered the appellant's remaining arguments and find them to be without merit.

MANGANO, PJ., ROSENBLATT, RITTER and COPERTINO, JJ., concur.

ENTER:

Martin H. Brownstein
Clerk

APPENDIX B

FAMILY COURT OF THE STATE OF NEW YORK
CITY OF NEW YORK : COUNTY OF QUEENS

In the Matter of	Docket No. Na 3330/89
PARUL PATEL,	
A Child Under Eighteen Years of Age, Alleged to be Abused by	DECISION AND OPINION
RASHMI PATEL, Respondent.	

APPEARANCES:

Attorney for Petitioner Commissioner of Social Services:	**Martha L. Kovel, Esq.** Special Asst. Corp. Counsel Queens County Family Court 89-14 Parsons Blvd. Jamaica, NY 11432
Attorney for Respondent:	**Michael V. Ricci, Esq.** 11-01 154th Street Whitestone, NY 11357
Law Guardian for the Child:	**Deborah Williams, Esq.** The Legal Aid Society 94-04 161st Street Jamaica, NY 11432

KAUFMANN, J.:

Petitioner, Commissioner of Social Services, commenced this child abuse proceeding under article 10 of the Family Court Act, by petition dated April 14, 1989, alleging that respondent father sexually abused his daughter Paula by subjecting her to sexual contact on several occasions.

Prior to the commencement of this proceeding, the child, Parul, lived with her mother and respondent-father in an apartment in Queens County. After the petition was filed, I released Parul to her mother's custody on condition that Parul's mother enforce a protective order prohibiting respondent from residing in the home or having contact with Parul.

Thereafter, a fact-finding hearing was conducted. Three witnesses testified: Geraldine Gelber, a school social worker; Faith Housin, a caseworker for the Commissioner of Social Services; and Dr. Don J. Lewittes, an expert in child sexual abuse ("validator"). [1]

The petitioner also called Parul to the witness stand to give eivdence. Her law guardian made application that Parul testify *in camera*. When respondent objected to the application, I questioned Parul in the courtroom about her capacity to understand the proceedings. Parul appeared frightened and began to cry. In light of her distress, I

---

[1]In the broadest sense, a validator is any person authorized to investigate a reported case of child sexual abuse to determine if the complaint is valid: that is, did sexual abuse of the target child actually occur or not? In a narrower sense, as the term is used by courts, a validator is an expert who "confirms or fails to confirm the existence of intrafamilial child sexual abuse syndrome and determines the existence of post-traumatic stress, from a cluster of behaviors". (*Matter of Linda K.*, 132 A.D.2d149, 158).

suggested that she be examined by a mental health professional to determine whether she could testify in some manner without suffering emotional trauma.

When the hearing resumed on the adjourned date, petitioner did not call Parul to give testimony. Instead, petitioner called Dr. Lewittes as a final witness. Respondent, too, decided not to call Parul as a witness.

Respondent neither testified in his own behalf nor called any other witness to testify in his behalf at the hearing.

I.

The following evidence was adduced.

On April 6, 1990, Parul's third grade class at P.S.-139 viewed an educationl file about sexual abuse. At the conclusion of the film, a teacher asked the class whether "anyone . . . touched you anywhere that you are not supposed to be touched." Parul told her teacher and the school principal, in response, that she had been touched by her father. The school principal immediately referred Parul to Geraldine Gelber, the school's social worker.

Ms. Gelber brought Parul to her office that same day, April 6, 1990. Parul told Ms. Gelber that in the morning, after her mother had left for work, "there were occasions . . . when her father was home . . . he asked her to come into his bed...." "She said that her father asked her to hold his penis and that he would at the same time touch her on the bottom." At times, she said, her uncle, who lived with the family, was at home, "and she was happy when he

was home because her father would not ask her to come into his bed".

Ms. Gelber reported Parul's allegations to the State Central Registry in Albany on April 6. She also telephoned Parul's mother and asked that both parents come to see her at school on April 7.

The State Department of Social Services alerted the Queens Field Office of the Commissioner to the report of suspected child abuse, and Parul's case was referred to caseworker Faith Housin. On the evening of April 6, 1990, she visited the Patel residence and spoke with Parul alone in the living room. Parul told her that, in 1988, her father "had held her hand and forced her to touch his penis . . . after her mother [had] left for work." She said that this occurred in the bedroom when she had night clothes on, and that these incidents ceased after she told her father "to stop or else she would tell her mother".

On the morning of April 7, Mrs. Patel went to school to speak with Ms. Gelber. They discussed Parul's allegations. An hour later, respondent also went to school to speak with Ms. Gelber. He told her that "what Parul had said to her was true." "He said he was not happy . . . about what had happened. That he loves his family very much. That he didn't want to have any problems." He asked her not to report what Parul had said, and told her "it hadn't happened in awhile." She informed him that she had already reported Parul's allegations to the authorities.

Ms. Gelber then spoke with Parul again, and told her what she had discussed with her parents. Parul told Ms. Gelber that she had wanted her mother to know about what

her father had done to her, but hadn't wanted to tell her mother herself. Parul also told her that an apartment building superintendent, who was a friend of her father, "had been accused of touching . . . one of the children in the building." Aware that Parul was being questioned by child protective workers, Ms. Gelber did not question Parul further.

In June, 1989, Parul repeated the allegations of sexual abuse against her father to Ms. Housin. She told Ms. Gelber, however, that she had been sexually molested by the apartment building superintendent.

In February, 1990, approximately two and a half months after Parul cried during questioning in the courtroom, she was interviewed by Dr. Don J. Lewittes. Dr. Lewittes did not interview Mrs. Patel because she declined to be interviewed (Respondent has also declined to be interviewed by Dr. Lewittes).

Dr. Lewittes was aware that Parul had alleged that she had been sexually abused by her father. He was not aware that she had also told Ms. Gelber that she had been sexually molested by the building superintendent.

At his first interview with Parul, Dr. Lewittes assessed her cognitive development, her ability to recall events, her ability to distinguish "good touch" from "bad touch", and her ability to differentiate truth from falsehood. Parul's cognitive development, he found, was consistent with her age (nine at the time of the interviews). She was able to remember personally significant memories. She knew the difference between appropriate and inappropriate "touching". She was clearly able to distinguish truth from

falsehood and fact from fiction.

When Dr.Lewittes questioned Parul about the allegations, she told him "she had said that [her father] had taken her hand and placed it on his penis, and . . . taken his hand and placed it on her . . . butt." She said that "she believed that her initial allegations were not real . . . that what she had initially alleged was . . . a product of a dream...".

When Dr. Lewittes asked Parul how she had determined that the initial allegations were "dreams", she said that she had been convinced that the allegations were real for more than a year, had been afraid to tell her mother about her father's actions, had finally felt a need to reveal her father's actions at school, and thereafter had consistently "told people what she believed to be a truthful story of the events that had occurred . . . with her father" until she went to a court hearing. "[F]ollowing the court hearing . . . she decided that what she reported was really a dream." Parul said that she was frightened of court proceedings. She also said that she felt responsible for the break-up of her family, was upset that her father had been removed from her home, and was afraid that her father might go to jail.

Dr. Lewittes asked Parul if she could remember details about "the dreams". Parul was able to remember that her father had put her "right" hand on his penis; that his hand touched her skin under her nightgown; that his finger was not inserted into her anus; and that she had been in bed in the morning after her mother left for work when her father did "these things" to her.

Parul told Dr. Lewittes that "these things" upset her very much; she didn't "enjoy it". She had asked herself how her father, who she loved, could have done "these things" to her. She was sad, became anxious, and had obsessive thoughts about what her father had done. She felt the need to disclose "these things" because she was so upset. "She couldn't stop herself from thinking about the fact [her father] had touched her" in this manner.

Dr. Lewittes found Parul to be anxious, depressed and very upset. She suffered from post-traumatic stress disorder. After assessing Parul's behavior, and the information elicited from her and received from others, within a scientific conceptual framework for child sexual abuse, he concluded that Parul's case is consistent with that of other children identified as victims of child sexual abuse by a family member (intrafamilial child sexual abuse).

Parul "talked about the dreaming as a general way of incorporating all the other details she had spoken about as her initial allegations." Dr. Lewittes found this to be inconsistent with how children discuss their dreams. Moreover, Parul's ability to remember specific details about her "dreams" was also inconsistent with a concluusion that the events she described could have been memories of dreams.

Dr. Lewittes concluded that Parul had made a "decision" to retract her allegations that her father had sexually abused her following a particularly frightening court appearance. She was upset by the court proceedings, he found, and also wished to reunite her family and make certain her father did not go to jail. Parul's "decision" that

"it was all a dream", Dr. Lewittes testified, is consistent in this case with the "suppression stage"[2] of the intrafamilial child sexual abuse syndrome. This stage of the syndrome, he stated, occurs when the consequences of disclosing the abuse lead the child to conclude that the only way to reunite the family, protect a loved relative, and ward off questioning by agencies and courts is to "retract" the allegations. The child, he said, often feels "emotionally" compelled to recant" the allegations. Often, there is also pressure from family members on the child to "recant". The child is made to feel that if he or she "would only take back [his or her] allegations then the family could [be reunited], the outside intervention agencies [would] go away, [and] the outside legal consequences [would] end...." "[I]ndeed, children . . . more typically than not will take back . . . their original allegations and come up with some form of recantation and retraction...."

Dr. Lewittes was apprised of Parul's allegation against the building superintendent while he was testifying at the fact-finding hearing. This additional information did not alter his conclusion that Parul's case is consistent with the cases of other child victims of intrafamilial sexual abuse. Parul's symptoms, he stated, are clearly consistent with the symptoms of children who have been sexually abused by a stranger (extrafamilial child sexual abuse).

Dr. Lewittes explained that the symptoms of child victims of intrafamilial sexual abuse are markedly different

---

[2]The dynamics of sexual encounters between adults and children usually fall within a predictable pattern. This is particularly true of those cases of intrafamilial child sexual abuse that come to light and are reporred. The activity usually occurs in five separate phases: the engagement phase; the sexual interaction phase; the secrecy phase; the disclosure phase; and often a suppression phase following disclosure. (Sgroi, Handbook of Clinical Intervention in Child Sexual Abuse at 12 [1982]).

from the symptoms of child victims of extrafamilial sexual abuse. He stated, for example, that child victims of extrafamilial sexual abuse might "repress" the abuse but would not exhibit symptoms associated with the "suppression stage" of intrafamilial child sexual abuse. Thus, child victims of extrafamilial sexual abuse would not recant the allegations to reunite the family and protect a loved family member from going to jail.

II.

An "abused child", as relevant to this proceeding, is a child less than eighteen years of age whose parent "commits . . . a sex offense against such child, as defined in the penal law...." (Fam. Ct. Act § 1012[e][iii]). If the Family Court makes a finding of abuse, "it shall make a further finding of the specific sex offense as defined in article one hundred thirty of the penal law." (Fam. Ct. Act § 1051[e]).

Although the Family Court Act refers to specific penal law sex offenses in defining the sexually abused child, abuse proceedings in Family Court are civil, not criminal, in nature. Because the accused parent is not subject to criminal sanctions in Family Court, a finding of sexual abuse need only be based on a preponderance of the evidence (Fam Ct. Act § 1046; *Matter of Tammie Z.*, 66 N.Y.2d 1); an inference may be drawn against the accused parent who fails to testify (*Commissioner of Social Services v. Philip De G.*, 59 N.Y.2d 137); and unsworn out-of-court statements of the child, although hearsay, may be received in evidence (Fam. Ct. Act § 1046[a][vi]). If properly corroborated by other evidence tending to support their reliability, out-of-court statements of the child victim will support a finding of sexual abuse (Fam. Ct. Act § 1046(a)(vi); *Matter of Nicole V.*, 71 N.Y.2d 112, *reconsideration denied* 71 N.Y.2d 890).

The child's out-of-court statements may be corroborated by "[a]ny other evidence tending to support" their reliability (Fam. Ct. Act § 1046[a][vi]). One form of legally sufficient corroboration is expert testimony that a child shares the psychological and behavioral characteristics and reactions typically shared by other child victims of sexual abuse in a family setting (*Matter of Nicole V., supra*).

Because of the importance of a finding of sexual abuse for both the child and the alleged abuser, courts require experts providing such "validation" testimony to be highly qualified (*Matter of E.M.*, 137 Misc.2d 197). Of course, in the final analysis, the Family Court must always determine whether the child's out-of-court statements have been reliably corroborated and whether the evidence as a whole supports a finding of sexual abuse (*Matter of Nicole V.*, 71 N.Y.2d 112, 119, *supra*).

Applying these concepts to the evidence, I conclude that Parul is an "abused child" within the meaning of Family Court Act Section 1012(e)(iii).

Parul made out-of-court statements that her father had sexually abused her to her teacher, her principal, Ms. Gelber and Ms. Housin. Those initial statements were consistent (*see Matter of Starr H.*, 156 A.D.2d 1024), and were made before she was under pressure to recant. There is no suggestion of any motive on her part to falsely accuse her father (*Cf. Matter of Kimberly X.*, 133 A.D.2d 226 [evidence that child fabricated statements because of problems she was having at home and out of a desire to protect her natural father]). Nor is there any evidence that Parul is psychologically disturbed (*Cf. Matter of Linda E.*, 143 A.D.2d 904, *app den* 69 N.Y.2d 613 [child suffered from an undersocialized conduct disorder, evidenced in part by an excessive and precocious sexual preoccupation]), or that her parents are involved in a custody battle (*CF. Matter of Smith*, 128 A.D.2d 784 [sexual abuse allegations made

during pendency of volatile divorce proceedings]; *see* A. Rosenfeld, C. Nadelson & M. Krieger, *Fantasy and Reality in Patients Reports of Incest*, 40 J. Clin. Psychiatry 159 [1979]).

Parul's initially consistent out-of-court statements were persuasively corroborated by the expert "validation" testimony of Dr. Lewittes, who is an expert with the requisite ability to interpret behavior and information elicited from interviews within a conceptual framework for child sexual abuse. He was able to conclude that Parul's case is consistent with other cases of child victims of intrafamilial sexual abuse. After careful evaluation, he was able to discount Parul's statements that a superintendent molested her and that her original allegations were "dreams". These belated assertions by Parul, he concluded, are consistent with the "suppression stage" of the intrafamilial child sexual abuse syndrome. This stage of the syndrome, he testified, occurs when both inward pressure from the child and outward pressure from family members cause the child victim to "recant" the original allegations in order to reunite the family, protect a loved parent, and eliminate the fear and embarrassement associated with the intervention of outside agencies and the courts.

Dr. Lewittes' conclusions comport with clinical and scientific literature, which makes clear that many sexually abused children recant their original allegations (Myers, Bays, Becker, Berliner, Corwin & Saywitz, *Expert Testimony in Child Sexual Abuse Litigation*, 68 Neb. L. Rev. 1 (1989); Sgroi, Handbook of Clinical Intervention in Child Sexual Abuse at 24-27 [1982]). This happens so frequently that experts now consider recantation one aspect of the child sexual abuse syndrome (Summit, *The Child Sexual Abuse Accommodation Syndrome*, 7 Child Abuse & Neglect 177 [1983]).

Children do fantasize and dream, but a true allegation of sexual abuse can almost always be

differentiated from a fantasy or dream by the explicitness of the assertion of what has taken place. When the allegation is real, the child can describe the specific context in which the sexual abuse occurred and the specific sexual acts. Dreams or fantasies, in contrast, do not have an explicit sexual context. In addition, the child perceives sexual dreams and fantasies as desired events and experiences (K. Faller, Child Sexual Abuse: An Interdisciplinary Manual for Diagnosis, Case Management and Treatment 5-6 and 133-134 [1988]). Thus, the explicitness of the child's account and the child's emotional reaction to the event indicate whether the reported event is reality or fantasy.

The child's age must also be considered by a "validator", since it is difficult for a child with an actual or cognitive age under seven years to separate reality from fantasy (*see* 40 J. Clin. Psychiatry, *supra*, at 161).

Dr. Lewittes carefully determined that Parul was actually and cognitively able to clearly distinguish dreams from reality. Parul described events of sexual abuse to him in explicit detail. The described events upset her very much. He could, therefore, credibly conclude, as he did, that Parul's original out-of-court statements were real events, not childhood fantasies or dreams.

Dr. Lewittes also credibly discounted Parul's assertion that she was molested by the buildinig superintendent. This belated assertion, he explained, was made by Parul after she had been separated from her father, and after she experienced internal and, perhapos, external pressure to recant.

Moreover, a child who has been molested by a stranger (such as the building superintendent) would be unlikely, as Parul did, to keep the incidents a secret for more than a year. Instead, the child molested by a stranger would be likely to immediately report the incidents to parents. They, in turn, would likely react appropriately by calling the police (*see* K. Faller, *supra*, at 56).

Finally, Parul's initially consistent out-of-court statements are also corroborated by respondent's statements to Ms. Gelber on April 7. While somewhat ambiguous, these statements provide additional assurance that Parul's out-of-court statements are reliable, and that the evidence as a whole supports a finding of sexual abuse.

Accordingly, I now make the findings required by Family Court Act § 1051(e). I find that respondent committed the following specific sex offenses against his daughter: Sexual abuse in the third degree (PL § 130.55); Sexual abuse in the second degree (PL § 130.60); and Sexual abuse in the first degree (PL § 130.65).

The petitioner is directed to prepare an Investigation and Report. The Mental Health Service is directed to prepare a full evaluation, including interviews with both parents and the child. The attorneys and respondent are directed to appear for disposition on November 21, 1990.

This constitutes the opinion, decision and order of the court.

ENTER

_____

Edward M. Kaufmann
Judge of the Family Court

Dated: October 12, 1990

APPENDIX B1

PRESENT: EDWARD M. KAUFMANN

At a term of the Family Court of the State of New York, held in and for the County of Queens at 60 Lafayette Street New York, on January 17, 1991.

CSS o/b/o
In the Matter of PARUL PATEL
(A) Child under 18 Years of Age
Alleged to be (Abused) by
RASHIMI PATEL
Respondent.

Docket No. Na 3330/89

ORDER OF DISPOSITION
(Child Abuse)

The petition of C.S.S. under Article 10 of the Family Court Act, sworn to on April 14, 1989, having been filed in this Court, alleging that the above named child is an abused child, and that Rashmi Patel is the parent of said child and

The matter having thereafter duly come on for a dispositional hearing before this Court, and the Court after having made an examination and inquiry into the facts and circumstances of the case and into the surroundings, conditions, and capacities of the persons involved:

and it appearing that the need for placement of the child would be eliminated by the issuance of an order of protection directing the removal of Rashimi Patel from the child's residence.

NOW therefore, upon findings made in the fact-finding order dated October 16, 1990, and in the dispositional hearing herein and upon all proceedings had

herein, namely: (State grounds for disposition, including those pertaining to preventive services efforts.) Statement of the Court read into the record on 1/17/91; it is hereby

(ORDERED that during the period of the aforesaid order of protection, the custody of the child(ren) be and the same hereby is awarded to Mother, Auila Patelk;)

(ORDERED that the (parent(s)) (person(s) legally responsible for the care) of the child comply with the terms and conditions specified in the order of protection annexed to this order and made a part hereof;) (and it is further)

(ORDERED child Parul Patel is released to the custody of her mother Order of Protection annexed hereto and made a part hereof.

Any subsequent adjudication of child abuse or finding of a felony sex offense as defined in sections 130-25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65 and 130.70 of the Penal Law may result in the committment of the guardianship and custody of the child, or another child, pursuant to section 384.6 of the social services law.

ENTER:

_____

J.F.C.
Edward M. Kaufmann

Dated: January 17, 1991

APPENDIX C

SUPREME COURT OF THE STATE OF NEW YORK APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

GUY JAMES MANGANO, P.J.
ALBERT M. ROSENBLATT
DAVID S. RITTER
JOHN COPERTINO, JJ.

DECISION & ORDER
ON MOTION

91-00484, 91-01602

In the Matter of Parul P. (Anonymous).
Rahsmi P. (Anonymous), appellant;
Commissioner of Social Services, appellant.

Motion by the appellant for reargument of appeals from two orders of the Family Court, Queens County, dated October 12, 1990, and January 17, 1991, respectively, which were determined by decsion and order of this court dated August 31, 1992, or, in the alternative, for leave to appeal to the Court of Appeals from the decision and order of this court.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion is denied.

MANGANO, P.J., ROSENBLATT, RITTER and COPERTINO, JJ., Concur.

ENTER:

Martin J. Brownstein
Clerk

February 1, 1993

MATTER OF P. (ANONYMOUS), PARUL

APPENDIX D

State of New York,
Court of Appeals

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the first day of July 1993

PRESENT, HON. JUDITH S. KAYE, *Chief Judge, presiding.*

2-10 Mo. No. 356
In the Matter of Parul P.
(Anonymous).

Rashmi P. (Anonymous),
Appellant;
Commissioner of Social Services,
Respondent.

A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

Donald M. Sheraw
Clerk of the Court

APPENDIX E

MICHAEL VINCENT RICCI
Attorney At Law
11-01 154th Street
Whitestone, N.Y. 11357
Tel. 718-767-2230

August 31, 1990

Honorable Edward Kaufman
Manhattan Family Court
60 Lafayette Street
New York, NY 10013

Re: Family Court: Patel (Respondent)
Docket No. Na 3330/89
Supreme Court: Patel (Defendant)
Ind. No. 2280/89

Honorable Edward Kaufman:

1. *Honorable Joseph Calabretta (Supreme Court Judge) Findings*

A. Please find enclosed copy of transcripts for August 21 and August 22, 1990 before the Hon. Joseph Calabretta, a Judge of the *Supreme* Court for the matter of People v. Patel, Inc. #2280/89.

Counsel directs this *Family* Court's attention to the August 22, 1990 transcript pages 3, 4 and 5:

> "When counsel were instructed to proceed to trial and send for a jury, which had been empanelled and ready to be sent to this part, I called for a side bar conference

attended to by both counsel. During that conference, it appeared to the Court that there was a good possibility that, based upon the representation by defense counsel, that this defendant was not in the country during the period alleged in the indictment.

MR. RICCI: Excuse me, alleged in the Bill of Particulars and in the Grand Jury and August 31st, written order of Judge Kenneth Brown which was April 1st to April 7th, 1988.

THE COURT: Including those dates.

The Court directed counsel to produce this morning a passport which would document this defendant's absence from this country during that period of time. This morning, in compliance with that direction, counsel did produce a passport which the passport carefully inspected and reviewed and the Court, to all intents and purposes and appearances, believes it to be a valid passport. That passport shows that this defendant arrived in India on March 23, 1988 and arrived--returned to New York arriving here in New York on April 8, 1988.

I am prepared to meet my commitment made to counsel yesterday upon the production of the passport to discuss the dismissal of this indictment with the Bureau Chief, Ms. Alice Vachss, I am

now informed by Assistant District Attorney Myrill, that Ms. Vachss is on vacation and not scheduled to return until Monday, August 27th. Ordinarily, this matter would and should be sent back to the originating part because actually, this case is not ready for trial at this moment. However, in view of the promise that I made counsel, that I would, if satisfied that the passport was a legal, valid one, that I would make every diligent effort to seek a dismissal of the indictment in the interest of justice. However, since Ms. Vachss is the Bureau Chief and presently on vacation, I can't do that until Monday morning. I have discussed this matter with defense counsel, he would prefer that the matter remain here, in view of the fact that I have made that promise to him and I certainly then will keep it here and persue that course.

Is there anything further you wish to say?

MS. MYRILL: Yes, Judge. I need a copy of the passport from Mr. Ricci.

THE COURT: Mr. Ricci will make that available.

MR. RICCI: I will make that available.

THE COURT: Let the record indicate he is now turning over a copy of the passport.

B. The personnel (or agents) in Family Court (including but not limited to: Martha Kovel (Petitioner's attorney), Deborah Williams (Fiduciary to child), Don J. Lewittes, Faith Hausen) all knew that my client, Rashmi Patel, was in India (as found by the Hon. Joseph Calabretta, *supra*) during the events in the United States. They were all given this information by the child herself, the mother, and by counsel especially on June 4, 1990 during the 2 hour off the record conference in chambers with your Honor present-after which your Honor physically had counsel thrown out of the courtroom after Petitioner's attorney (Ms. Kovel) and the Fiduuciary (Ms. Williams) objected to my introduction pursuant to CPLR 4518 of certified Hospital Records which had been subpoened by Ms. Kovel (So Ordered by Hon. E. Kaufman).

2. *Dismissal* (Ind. #2280/89)

On August 30, 1990, the case vs. Patel Ind. #2280/89 was dismissed in the Supreme Court.

3. *"Dreams"*

A. It has now come to my attention from a source from the Petitioner's side, through Supreme Court channels, that the child "stated to attorney" [i.e. Ms. Kovel and/or Ms. Williams] and "Case Worker" [i.e. Faith Hausen] that with reference to the father it was "a dream". This was *before* her interview with the "alleged" expect Don J. Lewittes.

B. During her interviews with this *"alleged"* expect Don J. Lewittes the child in her own handwriting wrote:

"I THOUGHT THAT HE DID SOMETHING IN MY PRIVATE BUT IT WAS A DREAM".

C. During these interviews with this "alleged" expert Don J. Lewittes the child said

"he put his hand on *his* butt"

All of the above Re "Dreams" was within the actual or imputed knowledge of Petitioner's attorney (Ms. Kovel), case worker (Faith Hausen), FIduciary (Ms. Williams) *before* they presented the "alleged" expert Don J. Lewittes *sworn* testimony.

On the record all of the above was intentionally withheld from counsel and the Court notwithstanding Petitioner's and Fiduciary's legal and ethical obligations.

4. *Frank Superintendant*

Also, the child told the "alleged" expert Don J. Lewittes about "Frank Superintendent" *before* he gave his sworn testimony.

Enter all Orders (Ex Parte or otherwise) and Send Copies

In prior motions I requested that all orders of this Family Court be Entered and Copies sent to counsel. I renew my request.

"60 Days" (CPLR 2219)

After counsel was thrown out of the courtroom, *supra*, the fact finding was over on June 6, 1990. At that time, this Court promised a prompt written signed court order pursuant to CPLR 2219.

I still have not received said written signed order.
The child, mother, and father want to get on with

their lives.

Very truly yours,

Michael Vincent Ricci

MVR/ec
encs.

C/C CLERK
Queens Family Court
89-14 Parsons Blvd.
Jamaica, N.Y. 11432

C/C Human Resources Administration
Office of Legal Affairs
Commissioner of Social Services
220 Church Street
New York, N.Y. 10013

C/C Legal Aid Society
Juvenile Rights Division
90-04 161st Street
Jamaica, N.Y. 11432

APPENDIX F

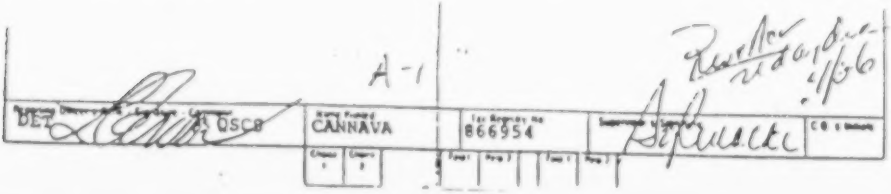
4/5/96 4/8/96 419 Queens Sex Crimes 2

Poveda Yvette

DETAILS
INVESTIGATE SEXUAL ABUSE
SUBJECT: CANVASS

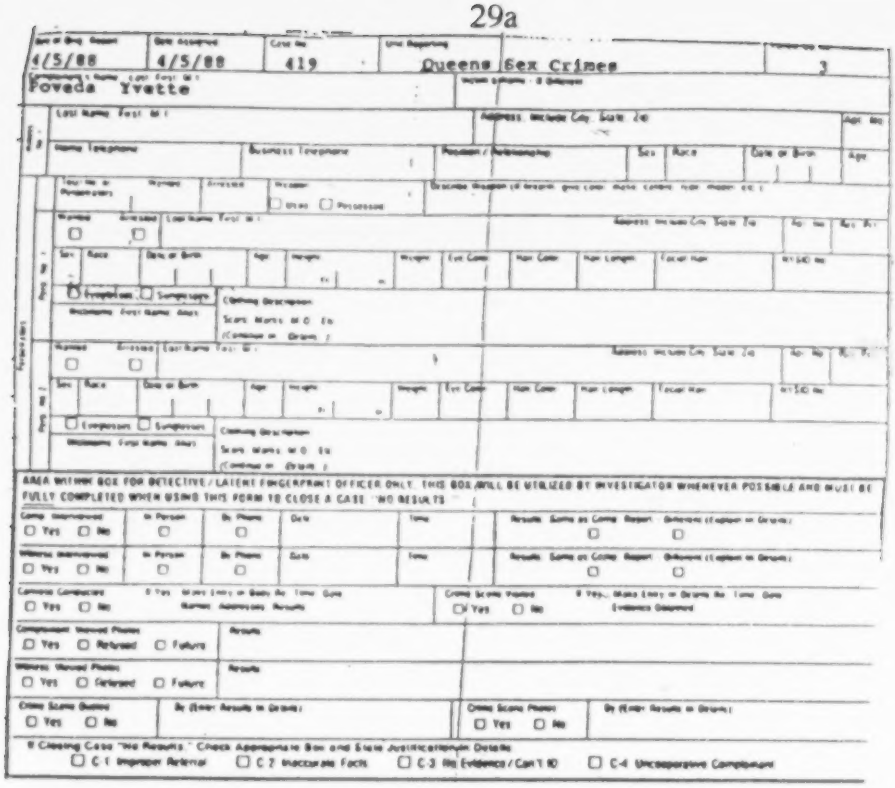
4. On this date the c/w mother and Ms. Marchun did respond to an apt unknown to the assigned at this time, to interview and a child who was baby sat by the subj. Upon getting to the apartment they found that the child mother and father were away in India and she was being taken care of by her grandmother. She did let the above two speak to the child and Ms. Marchun asked the child if the subj ever did anything to her and at that Point the child burst into tears. The assigned will get in touch with this child and her parents.

CASE ACTIVE



A-1

DET. DSCB CANNAVA 866954



Date of Rpt. Report	Date Assigned	Case No.	Unit Reporting	
4/5/88	4/5/88	419	Queens Sex Crimes	3

Complainant's Name (Last, First, M.I.): Poveda Yvette

INVESTIGATE: SODOMY
SUBJECT: REINTERVIEW C/W MOTHER

1. On Monday 4/11/88 at approx 1715 hrs. the assigned and Det Giardina did respond to. At that location the c/w mother stated to the assigned that her daughter had further stated to her that when the perp orally sodomized her he had put something that smelled like medicine on his tongue. The assigned at this time spoke with Mr. Rashmi the father of Patel the Indian girl that was supposedly abused by the subject also. He stated to the assigned that he was not sure if I wanted this daughter subjected to this at this time. He stated to the assigned that he would speak with his wife and come in to see the assigned on Wednesday morning at approx 0930 hrs to speak about his decision. The assigned at this time spoke with the c/w mother and told her that he was going to speak with the other girls father on Wednesday and at that time regardless of the results of the interview the subject would at this time be arrested if available.

"A-2"

Reporting Officer	Name Printed	Tax Registry No.	Supervising Officer
DET [signature] DSCS	CANNAVA	866954	[signature]

2. On this same date at approx 1830 hrs the assigned called up the legal bureau and spoke to a Lt Reisert and gave him the facts of the case and at this time told him that an answer could not be reached at the DA office. At this time the assigned was told by the above to make an arrest when ever ready.
CASE ACTIVE

APPENDIX G

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

In the Matter of
Parul Patel b 3/31/80
A Child under Eighteen Years of
Age Alleged to be Abused by

Rashmi Patel
Respondnet(s)

Docket No. Na 3330/89

SUMMONS

CHILD ABUSE CASE

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO: Rashmi Patel, 89-75 Vanderveer Street

A petition under Article 10 of the Family Court Act having been filed in this court, alleging that Parul Patel is (are) an abused child _____, a copy of said petition being annexed hereto:

YOUR ARE HEREBY SUMMONED to appeal before this Court at

89-14 Parsons Boulevard

Jamaica, New York 11432

on April 24, 1989 at 9:30 o'clock in the forenoon of said day to answer the petition and to show cause why an order should not be entered adjuding the aforesaid child ____ to be an abused child _____ and why you should not be dealt with according to law. Further why an order for support under Sec. 233 of the Family Court Act should not be made if the final disposition is an order of placement.

ON YOUR FAILURE TO APPEAR as herein directed, a warrant may be issued for your arrest.

Dated: April 18, 1989

BY ORDER OF THE COURT

_____

Clerk of the Court

UNLESS THIS SUMMONS IS SERVED WITHIN TWO DAYS, RETURN IT TO THE CLERK FOR ISSUANCE OF A WARRANT

Secs. 1012, 1031 F.C.A.

FAMILY COURT OF THE STATE OF NEW YORK

COUNTY OF QUEENS

In the Matter of
PARUL PATEL b. 03/31/80
A child___under Eighteen Years
of Age Alleged to be Abused by
RASHMI PATEL - Father
Respondnet(s)

SSC Worker: F. HOUSEN
SSC NO. 4971401
Unit 977
Docket No. Na 3330/89
Petition
Child Abuse Case
Phone:
481-5886
THIS PROCEEDING COULD LEAD TO PROCEEDING FOR TERMINATION OF PARENTAL RIGHTS UNDER THE SOCIAL SERVICES LAW.

TO THE FAMILY COURT

The undersigned petitioner respectfully show that WILLIAM GRINKER, COMMISSIONER OF SOCIAL

SERVICES OF THE CITY OF NEW YORK BY: S. GLUCK/ V. THOMPSON/J. GUTHRIE/J. JORDAN

(1) Petitioner, who resides at 250 Church Street New York, NY is a person authorized to file a petition under ARTICLE 10 of the Family Court Act by reason of the fact that (he) (she) is a duly authorized representative for the Commissioner of Social Services

(2) PARUL PATEL
is a child under the age of eighteen years, having been born on 03/31/80

(3) Said child resides with AUILA PATEL
at 62-64 Saunder Street, Rego Park 11374

(4) The father of said child is RASHMI PATEL
who resides 89-75 Vanderveer Street

The mother of said child is AUILA PATEL
who resides at SAME AS #3

The person legally responsible for the care of said child is RASHMI PATEL who resides at SAME AS #4

(5) (Upon information and belief), said child is an abused child in that: (Specify grounds of child abuse under Section 1012 of the Family Court Act.)

FOR ALLEGATIONS SEE ADDENDUM

(6) By reason of the facts alleged in paragraph (5) said child is also a neglected child.

(7) (Upon information and belief) RASHMI PATEL
the FATHER
said chld, (is) (are) the person(s) who (is (are) responsible for the abuse (and neglect) of said child.

The Corporation Counsel of the City of New York is made a party hereto pursuant to Section 254 (b) of the Family Court Act.

WHEREFORE, Petitioner prays that an order be made determining the said PARUL PATEL
to be an abused child, or, in the alternative, a neglected child and otherwise dealing with said child in accordance with the provisions of Article 10 of the Family Court Act.

Dated: April 14, 1989

_____
Petitioner

VERIFICATION

STATE OF NEW YORK)
COUNTY OF QUEENS) SS.:

S. GLUCK/V. THOMPSON/J. GUTHRIE/J.

JORDAN being duly sworn, says that I am the Petitioner in the foregoing petition; that said petition is true of my own knoweledge, except to those matters therein stated to be alleged upon information and belief and as to those matters, I believe it to be true.

_____

Petitioner

Sworn to before me, this
day of 14th 1989

_____

Notary Public
(Deputy) Clerk of the Court

Let (SUMMONS) ISSUE
(WARRANT)

Dated_____

FAMILY COURT OF THE STATE OF NEW YORK
CITY OF NEW YORK-COUNTY OF QUEENS

In the Matter of
PARUL PATEL

A child under Eighteen years
of Age Alleged to be Abused by

RASHMI PATEL - FATHER
Respondent(s)

DOCKET NO. _____

ADDENDUM

Parul Patel, born 03/31/80 is a child under the age of 18 years who is an abused child in that Rashmi Patel respondent father commits or allows to be committed a sex offense against such child, as defined in the penal law under sections 130.00 and 130.60 to wit:

1. On 04/01/89, 04/06/89, and 04/07/89 SSC received reports that on three occasions the respondent touched the child on the buttocks and had her fondle his penis. One report indicated that the respondent digitally molested the child's anus.

2. Respondent father admitted to touching the

child's buttocks and placing her hand on his penis on at least three occasions.

As a result of the foregoing, Parul Patel is an abused child.